

(1)

Richard Wellington, James
Wellington, and Bethel
Wellington, Infants, by Be- } Appellants.
thel Goodwin, their Guar-
dian, - - - - -

John Poulson, John Darby, } Respondents.
Arthur Bettefworth, and
Francis Clay, - - -

The CASE of the Respondent John Poulson.

27 Nov. 1715. Rich.
Wellington, Book-
seller, a Citizen and
Freeman of London,
deceased, leav-
ing Mary his Wi-
dow, and the Appel-
lants his three Chil-
dren.



THAT Richard Wellington, deceased, the Appellants late Father, was a Citizen and Freeman of London, and died on or about the 27th of November, 1715, intestate, leaving Mary his Widow, and the Appellants, his three Infant Children, by her; and he the said Richard Wellington being a Book-feller, his personal Estate, which was of considerable Value, chiefly consisted of Books for Sale in the Way of his Trade, and of Copies, and Parts and Shares in Copies, whereof he had the Property of Printing vested in him, and of Debts due to him; and, by the Custom of London, such personal Estate was (after a Deduction for Debts, Funeral Charges, the Widow's Chamber, and her Paraphernalia) to be divided into three equal Parts (*viz.*) one third Part to the said Mary the Widow, another third Part to and among the Children, and the remaining third is commonly call'd the dead Man's Part; and by the Statute for Distribution of Intestate Estates, is to be divided between the Widow and Children, whereof the Widow is to have one third, and the Children two thirds; so that the clear neat personal Estate being divided into nine equal Parts, four ninths thereof did belong to the said Mary the Widow, and the other five ninths to the said Children.

30 Nov. 1719. Ma-
ry Wellington, the
Widow, assigned to Trust-
ees her Books and
Stock in Trade, for
their Improvement.

That the said Mary Wellington the Widow having obtained Letters of Administration to her said late Husband, she the said Mary, by Indenture of that Date, made between her the said Mary Wellington of the one Part, and the Respondents John Darby, Arthur Bettefworth, and Francis Clay, of the other Part, reciting (*inter alia*) that her then Stock of Books, bound and unbound, had been valued and appraised by two indifferent Persons at 521 l. 10 s. and the Copies and Parts, Shares and Proportions of Copies, were mentioned in the Schedule thereunto annexed; and for the settling and assuring the said Books and Copies in Trade, and the Profits and Produce thereof, upon Trust, and for the Purposes therein after mentioned and expressed, and in Consideration of 10 s. therein mentioned to be paid to her, did assign to the said Darby, Bettefworth, and Clay, all and singular the Books in Stock and Trade so appraised and valued, as aforesaid, and all and every the Copies of Books, Stock, Shares, and Proportion of Copies mentioned in the said Schedule, and the Profits and Produce thereof, and all her Right, Interest, Property, Claim and Demand whatsoever, of, in, to, and out of the same Premises, by Means of the said Administration, or otherwise, to hold the same upon Trust, with all convenient Expedition to make an absolute Sale of all and every the said Books and Stock in Trade (excepting the said Copies, and Parts and Shares of Copies) and from Time to Time to reprint the said Copies of Books, and Parts and Shares of Copies, and to improve the same to the best Advantage, and to make Sale of all and every such Impressions as should be made of the same, as they the said Trustees should think fit, and upon further Trust
(subject

(subject to such Charges as are therein mentioned) as to four ninths of the Monies arising thereby, to pay, apply, and dispose of the clear and neat Monies resting due upon every such Account, unto the proper Hands or Appointment of her the said *Mary Wellington*, for her own separate Use, in Case of Marriage or otherwise, as she should think fit and direct; and after her Decease, then as to the then Residue and Remainder of the said Monies so arising for and in respect of the four ninths, of and in the said Produce of the said Books and four ninths, of and in the said Copies and Profits thereof in Trust for such Person or Persons, and for such Uses, Intents and Purposes, in such Proportions, or otherwise in such manner as she the said *Mary* in her Life-time by any Writing or Writings to be by her (notwithstanding any Coverture of hers) subscribed and sealed in the Presence of two or more credible Witnesses, or by her last Will and Testament in Writing, or any Writing purporting to be her last Will and Testament, testified by the like Number of credible Witnesses, whether she should be covert or sole, should from Time to Time appoint; and for want of such Direction and Appointment, or as to so much of the same Premises, whereof no such Direction or Appointment should be made, then in Trust for the said Appellants equally, to be divided between them Share and Share alike; and as for the other five ninths, in Trust for the said Appellants, to be equally divided between them, Part and Part alike, to be paid and deliver'd them respectively, when and as they should respectively become intitled to the Payment and Receipt thereof, upon or by Virtue of the Custom of London, aforesaid.

11 Jan. 1720. Marriage Articles between the Respondent *Poulson* and *Mary Wellington*.

That by Marriage-Articles of that Date, and made between the said Respondent *John Poulson* of the first Part, the said *Mary Wellington* of the second Part, and *George Bowland* of the third Part, reciting, that a Marriage was then intended between the said Respondent *John Poulson* and the said *Mary Wellington*, and that the said *Mary Wellington* had settled on Trustees the respective Proportions of her late Husband's Estate belonging to her Children, the said Appellants, for their Benefit, with the Privity and Consent of the said *John Poulson*, and her own Share and Proportion of her said Husband's Estate being to be kept separate for her own Use and Benefit, unto which her said separate Share and Proportion the Respondent *John Poulson* would be intitled, in case the said intended Marriage took effect; it was agreed, and the said Respondent *John Poulson*, in Consideration of the said intended Marriage and Marriage-Portion, did thereby covenant with the said *George Bowland*, that he would, in three Months after the said Marriage, assign unto the said *George Bowland* two Leasehold Estates therein mentioned, in Trust for himself for Life, and after his Decease for the said *Mary Wellington* for her Life, with Remainders over to the Issue of the Marriage, and in Default of such Issue, as the said *John Poulson* and *Mary Wellington*, or the Survivor, should appoint; and that the said *Mary Wellington*'s separate Share or Right to her late Husband's Copies of Books should, during their joint Lives, remain and continue unaltered, and should not nor would be disposed or varied by him the said *John Poulson*, or his Order, without the Consent of the said *Mary Wellington* under her Hand, attested by two Witnesses; and that the said *Mary Wellington* should manage her own Proportion of her said late Husband's Estate in such manner as she should think fit during her Life, and that he was content to receive or have the Benefit of only the Produce thereof during their joint Lives, and that she the said *Mary* should have Power by Will or Writing duly attested (notwithstanding Coverture) to dispose of the said separate Share in the said Copies, to such Person or Persons after her Death as she should think fit, reserving and excepting always, and it was agreed, that the said *John Poulson*, in case he survived the said *Mary Wellington*, should have and receive out of the first Produce and Profits of the said *Mary*'s separate Estate arising after her Death, the Sum of 200 l. as soon as the same could conveniently be raised.

24 Octob. 1726. *Mary* died.

Poulson took out Administration to her, and also Administration de bonis non to *Richard Wellington*.

Bill in the Court of Chancery.

That soon after the said Articles the said Marriage took Effect, and the said Respondent *John Poulson* had no other Portion with her but the Benefit of the Produce of the said Books and Copies, as aforesaid, and on or about the 24th Day of October, 1726. she the said *Mary* died, without making any Appointment by Will or otherwise, in Pursuance of the Power reserved to her by the said Deed of the 30th of November, 1719; and the said Respondent *John Poulson* hath sued out Letters of Administration to her, and also Letters of Administration of the Goods and Chattels of the said *Richard Wellington*, unadministred by the said *Mary*.

That the Respondent *John Poulson* having preferred his Bill in the Court of Chancery against the other Respondents, *Darby*, *Bettesworth*, and *Clay*, and against the Appellants and the said *George Bowland*, for an Account of the personal Estate of the said *Richard Wellington*, it was prayed (*inter alia*) that the said Trustees might pay and deliver to him, the said Respondent *Poulson*, such Parts and Proportions thereof as should appear to belong to him; and all the Persons named therein as Defendants having put in their Answers thereto, the same were replied unto, and Issue was joined. And

Decree.

The Cause came on to be heard before the Right Honourable the Lord High Chancellor of Great Britain, the 23d of June, 1729, who was pleased to decree, that the Respondents,



spondents, *Darby*, *Bettesworth*, and *Clay*, should come to an Account with the Respondent *Poulson*, before Mr. *Elde*, one of the Masters of the said Court, for the four ninth Parts of the personal Estate of the said *Richard Wellington* in their Hands, by Virtue of the said Assignment, to commence from such Time as is therein specify'd; and in taking the said Account, the said Master was to make all just Allowances, and both Sides to be examined on Interrogatories, as the Master should direct, and to produce all Books of Account, Papers and Writings, and all Parties to have their Costs out of the four ninths of the said Intestate's personal Estate belonging to the said Respondent *Poulson*.

From which Decree, the Appellants have appealed to your Lordships. And it is

Objection.

Objected, That Respondent *Poulson*, before his Marriage, knew of the said Deed of Trust of the 30th of November, 1719, and that the said *Mary* dying without making any Appointment, as is pretended, of her four ninths, the same doth now belong to the said Appellants (except the 200*l.* in the said Marriage-Articles mentioned) and that the said Respondent ought not to be intitled to any more thereof than such 200*l.* and that the Marriage-Articles ought to be construed rather a Confirmation of the said Deed of Trust, than an Execution of the Power therein contained.

First Answer.

But the said Respondent *Poulson* doth insist, That it was the Intent of the said Parties to the said Marriage-Articles, that he should have the said *Mary*'s four ninths of the said Estate, subject only to the Restrictions mentioned in the said Articles, and that the said Articles do amount to an Appointment in his favour, subject to those Restrictions; and that the said Recital in the said Marriage-Articles, and the Respondent *Poulson*'s Covenant to make a Settlement in Consideration of the Marriage-Portion, are Evidence that the said Parties so intended and agreed.

Second Answer.

That the Clause which gave the said Respondents late Wife a Power by Will or Writing, notwithstanding her Coverture, to dispose of her separate Share, except as to 200*l.* must be understood of an Appointment to be made after the Articles, and that no such having been made, the Respondent *Poulson* is intitled to the entire four ninths, as Administrator to his said Wife, the legal Right and Interest of all Choses in Action, of or belonging to the said *Mary*, being thereby vested in him.

For which, and several other Reasons, the Respondent *John Poulson* doth humbly insist, that the said Decree is just, and according to the Rules of Equity, and hopes that the same will be affirmed by your Lordships, and the Appeal dismiss'd with Costs.

C. Talbott.

Tho. Lutwiche.

Richard Wellington, James
Wellington, and Bethel } Appellants.
Wellington, - - - - -

John Poulton, John Darby, }
Arthur Bettefworth, and } Respondents.
Francis Clay, - - - - -

The CASE of the Respondent
John Poulton.

*To be heard at the Bar of the House of
Lords the 9th Day of May, 1730.*

Done affirmed



C. Talbot.
The. L. M. J. C.

